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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Marcos Pasaye,

Plaintiff

v.

James Dzurenda, et al.,

Defendants

Case No.: 2:17-cv-02574-JAD-VCF

**Order Dissolving Injunction and Resolving
All Other Pending Motions**

[ECF Nos. 27, 39, 40, 41, 45]

Pro se plaintiff Marcos Pasaye was an inmate at Nevada's High Desert State Prison when he filed this civil-rights lawsuit challenging the Nevada Department of Corrections (NDOC) administrative regulations that precluded him from participating in Native American ceremonies because he is not of Native American descent nor a tribal member. Pasaye then successfully moved for an injunction directing that he be permitted to participate in the Native American ceremonies at his facility.¹ But the week after I granted that motion, Pasaye was paroled, so defendants move to "reconsider and vacate" the preliminary injunction, arguing that Pasaye's release has mooted this "case in controversy."² Though Pasaye's release is a changed condition that has eliminated his need for the injunction, this case is not moot because he also seeks damages for the alleged two-year deprivation of his religious-practice rights. So I dissolve the injunction as moot, but this case proceeds.

I. Motion for reconsideration [ECF No. 27]

The March 22, 2019, order granting Pasaye's motion for preliminary injunction required NDOC and its employees to allow Pasaye to participate in the Native American ceremonies it

¹ ECF No. 25 (order).

² ECF No. 27.

1 allows for other Native American practitioners, including the sweat lodge, prayer circle, drum
2 circle, smudging, and sacred pipe, and give him access to the Native American grounds.³
3 Pasaye’s release from HDSP just days later mooted the need for that injunction because he “is no
4 longer subject to the prison conditions [and] policies he challenges,” and this is not a class
5 action.⁴

6 Pasaye argues that his case satisfies an exception to the mootness because he faces a
7 lengthy parole and lifetime supervision, “which gives a more likely than not chance that [he] will
8 be reincarcerated and again subject to” the challenged prison policy.⁵ But that possibility of
9 reincarceration is too speculative a basis on which to conclude that Pasaye’s claims are capable
10 of repetition because it depends on him violating his parole or supervision conditions.⁶ As the
11 Ninth Circuit held in *Reimers v. Oregon* when considering a similar argument, “we will not
12 apply the repetition doctrine because [the releasee] is able, and indeed is required by law, to
13 prevent this from occurring.”⁷ So I dissolve the injunction.

14 But Pasaye’s release did not moot his claims. “It is firmly established that claims for
15 monetary damages survive a prisoner’s release from the officers’ custody.”⁸ Because Pasaye
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19 ³ ECF No. 25.

20 ⁴ See *Alvarez v. Hill*, 667 F.3d 1061, 1064 (9th Cir. 2012) (“An inmate’s release from prison
21 while his claims are pending generally will moot any claims for injunctive relief relating to the
22 prison’s policies unless the suit has been certified as a class action.” (quoting *Dilley v. Gunn*, 64
23 F.3d 1365, 1368 (9th Cir. 1995))).

24 ⁵ ECF No. 31 at 4.

25 ⁶ See *Alvarez*, 667 F.3d at 1065.

26 ⁷ *Reimers v. Oregon*, 863 F.2d 630, 632 (9th Cir. 1988).

27 ⁸ *Rhodes v. Robinson*, 408 F.3d 559, 566 n.8 (9th Cir. 2005)

1 seeks damages for civil-rights violations that he claims occurred during his incarceration, a case
2 or controversy remains.⁹

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4 **II. Pasaye's motion to enforce order, for extension of time, and for contempt**
5 **[ECF Nos. 39, 40, 41]**

6 On May 3, 2019, the magistrate judge granted Pasaye leave to amend, directed the Clerk
7 of Court to file his first amended complaint, and gave the Nevada Attorney General until May
8 24, 2019, to advise the court whether it could accept service for any of the defendants.¹⁰ The
9 order further stated that any defendant the AG accepts service for must respond to the first
10 amended complaint by July 2, 2019.¹¹

11 Apparently under the assumption that the defendants failed to do so, Pasaye moves the court
12 to enforce that order, give him additional time to serve the defendants, and to hold the AG in
13 contempt.¹² But Pasaye is mistaken; the AG timely responded by notifying the court on May 24,
14 2019, that it accepts service on behalf of all of the defendants.¹³ The AG demonstrates that it
15 mailed Pasaye a copy of that notice, but that mail was returned.¹⁴ Because defendants timely
16 complied with the court's order and have accepted service on behalf of all of the defendants,¹⁵

17 ⁹ See ECF No. 34. Although the defendants used loose language in their motion, stating that
18 "there is no longer an ongoing 'Case' or 'Controversy' left to be adjudicated in this case," ECF
19 No. 27 at 2, they concede in their reply brief that they weren't seeking dismissal, just an order
20 vacating the injunction. See ECF No. 32.

21 ¹⁰ ECF No. 33.

22 ¹¹ *Id.*

23 ¹² ECF Nos. 39–41.

¹³ ECF No. 36.

¹⁴ ECF No. 42-1. Court mail that was sent to Pasaye around the same time was similarly
returned, corroborating that claim. ECF No. 38.

¹⁵ ECF No. 36.

1 Pasaye's motions to enforce the order and hold defendants in contempt¹⁶ are denied. And
2 because the AG has accepted service on behalf of all of the defendants, Pasaye needs no
3 additional time to serve them, so I deny his motion to extend time to perfect service.¹⁷

4
5 **III. Defendants' motion to extend time to respond to the amended complaint**
6 **[ECF No. 45]**

7 Finally, defense counsel timely asks for a 45-day extension of the July 2, 2019,
8 deadline¹⁸ for defendants to respond to the amended complaint.¹⁹ Good cause appearing, I grant
9 that motion. However, I caution defense counsel that workload will not constitute good cause
10 for a second extension of this response deadline.

11 **Conclusion**

12 Accordingly, IT IS HEREBY ORDERED that the Motion for Reconsideration [ECF No.
13 27] is **GRANTED in part: the injunction issued on March 22, 2019, is DISSOLVED** and no
14 longer in effect;

15 IT IS FURTHER ORDERED that plaintiffs' motions to enforce order, extend time for
16 service, and for contempt [ECF Nos. 39, 40, 41] are **DENIED**;

17 IT IS FURTHER ORDERED that defendants' motion for extension of the deadline to
18 respond to the amended complaint [ECF No. 45] is **GRANTED: the July 2, 2019, deadline to**
19 **respond to the amended complaint [ECF No. 34] is extended to August 16, 2019.**

20 Dated: July 5, 2019

21 
22 U.S. District Judge Jennifer A. Dorsey

23 ¹⁶ ECF Nos. 39, 41.

¹⁷ ECF No. 40.

¹⁸ ECF No. 33.

¹⁹ ECF No. 34.